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No. 798

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

ROBERT E. BELL,

Petitioner,

—against—

THE BUCKEYE UNION CASUALTY COMPANY

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement of the case	6-11
Argument for allowance of writ	11-20
Appendix I—Opinion of the Court of Appeals	21-28
Appendix II—Judgment of the Court of Appeals	29
Appendix III—Order Denying Petition for Rehearing	31

AUTHORITIES CITED

Cases:

Bispham v. Mahoney, 37 Del. 285, 183 A. 315 (1936)	13-14
Culley v. Farm Bureau Mut. Ins. Co. of Indiana, Inc., 224 Ind. 483, 69 N. E. 2d 19 (1946)	16
Hickman v. Tullos, 121 F. Supp. 152 (N.D. Ala. 1954)	16
Lackey v. Olds & Stoller Interexchange, 80 Cal. App. 687, 252 P. 672 (1927)	18

INDEX

	Page
Marple v. American Automobile Ins. Co., 82 Cal. App. 137, 255 P. 260 (1927)	18
Masonic Acc. Ins. Co. v. Jackson, 200 Ind. 472, 164 N. E. 628 (1929)	17
McFarland v. Cordiero, 99 Cal. App. 352, 278 P. 889 (1929)	18
Opple v. Ray, 208 Ind. 450, 195 N. E. 81 (1935)	17
Preferred Accident & Insurance Company of New York v. Onali, 125 F. 2d 580 (8 Cir. 1942)	19
Robinson v. Hardaway, 293 Ky. 627, 169 S. W. 2d 823 (1943)	18
Shadow v. Standard Acc. Ins. Co., 111 Ind. App. 19, 39 N. E. 2d 493 (1942)	16
Indiana Statutes:	
Indiana Acts 1945, Ch. 304, Sec. 54	2-4
Indiana Acts 1935, Ch. 162, Sec. 177	5-6
Miscellaneous:	
Annotation, 26 A.L.R. 2d 1320-1333	13
National Safety Council, "Accident Facts" (1957 Edition)	12

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Robert E. Bell, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this cause.

OPINIONS BELOW

The opinion of the District Court has not been reported. It is set forth at pp. 29-47 of the Appendix of Record accompanying and printed together with petitioner's original brief filed in the Court of Appeals. (Said appendix is hereinafter referred to as "Record.")

The opinion of the Court of Appeals has been reported at 249 F. 2d 211. A copy is appended as Appendix I.

JURISDICTION

The judgment of the Court of Appeals was entered on October 31, 1957 (infra, Appendix II). A petition for rehearing was denied on November 26, 1957 (infra, Appendix III). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C.A. Section 1254 (1).

QUESTION PRESENTED

Whether, when language in an automobile liability policy excludes from coverage "liability assumed by the insured under any contract or agreement," the policy nevertheless provides coverage to the named insured thereunder in respect to liability for death and personal injuries caused by the negligent operation of an automobile by a minor whose application for a driver's license was signed by the named insured, such liability being predicated upon the provisions of a statute of the State of Indiana providing in part that any person signing such an application

> ". . . . thereby agrees to be responsible, jointly and severally with such applicant, for any injury or damage which such applicant may cause by reason of the operation of a motor vehicle, in all cases where the applicant is liable in damages."

STATUTES INVOLVED

Indiana Acts 1945, Chapter 304, Section 54, Volume II, pp. 1345-1346, Burns' Indiana Statutes Annotated (1952 Replacement), Section 47-2706, Volume 8 (Part 2), pp. 1267-1268, reads as follows:

> "(a) Every application for any permit or license to be issued under, and by virtue of, the provisions of this act, shall be made upon the approval (approved) form for such application, furnished by the department, and shall be verified by the applicant before a person authorized to administer oaths.
>
> (b) Every applicant shall state the name, age, sex and residence address of the applicant, and whether or not the applicant has been theretofore licensed as an operator, chauffeur, conditional

chauffeur, public passenger chauffeur, or has been the holder of a beginner's permit, or a school permit, and if so when and by what state, and whether or not such license or permit has ever been suspended or revoked, and if so, the date of, and the reason for, such suspension or revocation, and whether or not the applicant has been convicted of any crime punishable as a felony under the motor vehicle laws of this state, or any other felony in the commission of which a motor vehicle is used and if the applicant has any physical or mental disability, he shall so state in his application, giving the nature of such disability, and such other information as the commissioner may direct, such statements to be sworn to before a person authorized to administer oaths.

(c) The application, of any person, under the age of eighteen (18) years, for any permit or license to be issued under the provisions of this act, shall be signed and sworn to or affirmed before a person authorized to administer oaths, by the father of the applicant, if the father is living and has custody of such applicant, otherwise by the mother or guardian having the custody of such applicant, or in the event neither parent is living and the applicant has no guardian, then by the person having custody of him or by an employer of such applicant and in the event there is no parent, guardian, or employer, then by any other responsible person, who is willing to assume the obligations imposed upon him by the provisions of this section.

(d) Any person so signing such application as above provided thereby agrees to be responsible, jointly

and severally with such applicant, for any injury or damage which such applicant may cause by reason of the operation of a motor vehicle, in all cases where the applicant is liable in damages.

(e) Any person, who has so signed the application of such applicant for a permit or license, may thereafter file with the department a verified written request that such permit or license so granted be canceled. Thereupon the department shall cancel such permit or license and the person, who signed the application of such minor applicant, shall be relieved from the liability imposed under this section, by reason of having signed such application, thereafter incurred by such minor in operating a motor vehicle.

(f) When such minor applicant reaches the age of eighteen (18) years, the person who has signed said minor's application shall be relieved from the liability, imposed under this section, thereafter incurred by such minor in operating a motor vehicle under this section.

(g) In the event of the death of such signer, the permittee or licensee shall notify the department of the decease of the signer and obtain a new signer.

(h) The department, upon receipt of satisfactory evidence of the death of the person who signed the application of such minor for a permit or license, and upon the failure of the permittee or licensee to obtain a new signer, shall cancel such permit or license and shall not issue a new permit or license until such time as a new application duly signed and verified is made as required by this section."

Indiana Acts 1935, Chapter 162, Section 177, p. 722. Burns' Indiana Statutes Annotated (1952 Replacement), Section 39-4309, Volume 8 (Part 1), p. 224, reads as follows:

"No policy of insurance against loss or damage resulting from accident to, death or injury suffered by an employee or other person or persons and for which the person or persons insured are liable, or, against loss or damage to property resulting from collision with any moving or stationary object and for which loss or damage the person or persons insured is liable, shall be issued or delivered in this state by any domestic or foreign corporation, insurance underwriters, association, or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision that the insolvency or bankruptcy of the person or persons insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of such policy, and stating that in case execution against the insured is returned unsatisfied in an action brought by the injured person or his or her personal representative in case death resulted from the accident because of such insolvency or bankruptcy then an action may be maintained by the injured person, or his or her personal representative, against such domestic or foreign corporation, insurance underwriters, association or other insurer under the terms of the policy for the amount of the judgment in the said action not exceeding the amount of the policy. No such policy shall be issued or delivered in this state by any foreign or domestic corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision that notice given by or on behalf of the insured to any authorized agent of the insurer within this state,

with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. No such policy shall be issued or delivered in this state to the owner of a motor vehicle, by any domestic or foreign corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision insuring such owner against liability for damages for death or injury to person or property resulting from negligence in the operation of such motor vehicle, in the business of such owner or otherwise, by any person legally using or operating the same with the permission, express or implied, of such owner. A policy issued in violation of this section shall, nevertheless, be held valid but be deemed to include the provisions required by this section, and when any provision in such policy or rider is in conflict with the provision required to be contained by this section, the rights, duties and obligations of the insurer, the policyholder and the injured person or persons shall be governed by the provisions of this section."

STATEMENT OF THE CASE

This action was instituted in the United States District Court for the Southern District of Indiana by respondent, The Buckeye Union Casualty Company, to obtain a declaratory judgment that an automobile liability policy issued by it to petitioner, Robert E. Bell, did not provide coverage for him or other persons in respect to liability then being asserted against petitioner and other persons in another action already pending in that court. The action that was already pending in the District Court below when this action was filed was the case of Virginia J. Weigle, Administratrix, et al. v. Ralph E. Brill, Administrator, et al. In that pending action, Virginia J. Weigle, both as administratrix of the estate of Edward T. Weigle, deceased, and in her individual capacity,

and the two minor children of Virginia J. Weigle, were seeking to recover damages for wrongful death of their decedent, Edward T. Weigle, and damages for personal injuries, from various defendants, including petitioner.

In this declaratory judgment action, respondent joined as defendants, first, the persons who were the plaintiffs in the pending lawsuit instituted by the members of the Weigle family, and, second, two of the persons who were defendants in the pending lawsuit instituted by Virginia J. Weigle and her two minor children, namely, petitioner Robert E. Bell, and one Ralph E. Brill, administrator of the estate of Joseph Bell. The jurisdiction of the District Court in this action was based upon the diversity of citizenship existing between the plaintiff-respondent insurance company on the one hand and the various defendants on the other.

After all defendants had filed an answer, they filed a motion for summary judgment seeking an adjudication that the automobile liability policy issued by the respondent to petitioner did provide petitioner with coverage in respect to the liability asserted against him by the members of the Weigle family in the pending Weigle lawsuit. A cross motion for summary judgment was filed by respondent. The District Court overruled petitioner's motion for summary judgment, granted respondent's motion for summary judgment, adopted for its memorandum opinion the proposed memorandum opinion filed by respondent, and entered a judgment adjudicating that respondent under the insurance policy in question was under no obligation either to petitioner or to anyone in respect to claims then being asserted in the pending Weigle Case. (Record, p. 28)

Petitioner appealed to the Court of Appeals. The Court of Appeals affirmed the judgment of the District Court, and denied petitioner's petition for rehearing. (Appendices II and III, infra)

Adjudication of the issues posed by the pleadings involved analysis of two factors about which there was no factual dispute. One factor was the nature of the liability being asserted against petitioner in the pending Weigle lawsuit. The other factor was the content of the insurance policy issued by respondent to petitioner.

As to the first factor, the Weigles were alleging that they were entitled to recover damages because their decedent had been wrongfully killed, and they had received personal injuries, as the result of the negligent operation of an automobile by one Joseph Bell. The Weigles were not attempting to link petitioner to the negligence of Joseph Bell by invoking the doctrine of **respondeat superior.** Instead, the Weigles in their lawsuit claimed that petitioner was responsible for the negligence of Joseph Bell on the following ground, as stated in their complaint:

> "Prior to the time of the collision complained of herein the defendant Robert E. Bell signed Joseph Bell's application for an Indiana Motor Vehicle Operator's License, and in so doing the defendant Robert E. Bell made a written undertaking as a part of said application wherein the defendant Robert E. Bell agreed to be responsible, jointly and severally, with the said Joseph Bell, for any injury or damage which said Joseph Bell might cause by reason of Joseph Bell's operation of a motor vehicle in all cases where Joseph Bell is liable in damages. Said application is in the custody and control of The Indiana Bureau of Motor Vehicles, and plaintiff does not have a true copy of said written promise." (Record, p. 22)

And in this action instituted by respondent, petitioner agreed with the allegations of respondent that at the time of the automobile collision involved in the Weigle Case Joseph Bell had not been an employee of petitioner; and petitioner has admitted that at the time and place of the collision involved

in the Weigle Case Joseph Bell had not been driving the automobile specifically described in the automobile liability policy issued by respondent to petitioner. (Record, pp. 15-17)

The liability asserted against the petitioner in the Weigle Case, therefore, if established, would arise out of petitioner having signed an application for a driver's license in Indiana for Joseph Bell and would be predicated upon the provisions of the Indiana statute referred to above, Burns' Indiana Statutes Annotated (1952 Replacement) Section 47-2706.

As to the second factor, the content of the policy in question, respondent agreed with petitioner, under Clause I of the "Insuring Agreements" of the policy, in part, as follows:

> "I. COVERAGE A—BODILY INJURY LIABILITY—TO PAY on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile . . ."

Clause V of the "Insuring Agreements" of the policy read as follows:

> "V. USE OF OTHER AUTOMOBILES
>
> If the named insured is an individual who owns the automobile classified as 'pleasure and business' or husband and wife either or both of whom own said automobile, such insurance as is afforded by this policy for bodily injury liability, for property damage liability and for medical payments with respect to said automobile applies with respect to any other automobile, subject to the following provisions:
>
> (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word 'insured' includes (1) such named insured,

(2) the spouse of such individual if a resident of the same household and (3) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III, Definition of Insured, does not apply to this insurance.

(b) This insuring agreement does not apply:

(1) to any automobile owned by, hired as part of a frequent use of hired automobiles by, or furnished for regular use to, the named insured or a member of his household other than a private chauffeur or domestic servant of the named insured or spouse;

(2) to any automobile while used in the business or occupation of the named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, chauffeur or servant;

(3) to any accident arising out of the operation of an automobile repair shop, public garage, sales agency, service station or public parking place;

(4) under coverage C, unless the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by such chauffeur or servant, or from the occupancy of said automobile by such named insured or spouse." (Record, pp. 14-15)

Under the "Exclusions" section of the policy, coverage is excluded in respect to "liability assumed by the insured under any contract or agreement . . ." (Record, p. 5). Also, paragraph 16 (b) under the "Conditions" section of the policy read as follows:

"ASSISTANCE AND COOPERATION OF THE INSURED Coverages A, B, D, E, F, G, H and I: The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident."

(See Additional Appendix accompanying and printed as part of petitioner's reply brief filed in the Court of Appeals below.)

ARGUMENT FOR ALLOWANCE OF WRIT

That the judgment of the Court of Appeals is the first and only decision by any appellate tribunal to hold that a named insured who signs an application for a minor's driver's license under a statute like Burns' Indiana Statutes Annotated (1952 Replacement) Section 47-2706 is thereby assuming a liability that sounds in contract, or that is within the purview of the "contract or agreement" exclusionary language of an automobile liability policy; that the opinion of the Court of Appeals discloses on its face misapprehension of the issues posed by the record;* that the Court of Appeals affirmed

* The opinion of the Court of Appeals states that "from a careful consideration of this language"—namely, the "Use of Other Automobiles" clause in the Insuring Agreements of the policy—"it became obvious that Joseph Bell is not a person included" in said clause. But it was never relevant whether or not Joseph Bell had insured status under the policy. Petitioner admitted in its answer that Joseph Bell was neither the named insured nor an insured of any kind under the policy in question. The Court of Appeals was not faced with the question of sanctioning an infinite extension of coverage among minors, even engaging in the improbable assumption that petitioner was likely to sign the applications for driver's licenses of an infinite number of minors. It is petitioner, the named insured under the policy, who is being deprived of coverage by the opinion below.

the judgment of the District Court on the basis of a cursory statement that "We agree" with respondent's contention concerning the exclusionary language in question—that, in short, the Court of Appeals reached an erroneous conclusion in an opinion that disposed of difficulties by ignoring them may not, by itself, warrant review on certiorari of this case by the Court. But this erroneous decision of the Court of Appeals impinges upon a problem that is of major practical importance to the public generally in day by day living in this country.

The problem referred to is how to accommodate, on the one hand, the economic and social forces in our national life that press for the granting of permission to minors to drive automobiles with, on the other hand, the need for the existence of financial responsibility behind the drivers' wheel of the country's automobiles and other motor vehicles. The teenager who needs to work to supplement the family income and who needs to drive in order to work; or the teenager who wants to drive the family car and who will forfeit, or who thinks he will forfeit, prestige among his peers if he is not permitted to drive; the parents who are importuned to hand over family car keys to their teenage youngsters—these are familiar sociological phenomena today.

However, it is precisely the teenage driver who is apt to drive fast. According to a pamphlet published by the National Safety Council, entitled "Accident Facts (1957 Edition), p. 63, drivers under 18 years of age and in the 18-20 age group were involved in fifteen per cent of the fatal motor vehicle traffic accidents in 1956. And, according to that pamphlet, p. 52, a study made at Iowa State College indicated that, on the basis of 100,000 miles of travel, accident rates by age groups of male drivers in Iowa were as follows: 16-21 years: 1.5; 22-27 years: 1.0; 28-47 years: 0.7; and 48-65 years: 0.6.

In Burns' Indiana Statutes (1952 Replacement) Section 47-2706, the Indiana legislature recognized the necessity for permitting teenagers to drive if some attempt is made to obtain financial responsibility. The issuance of a driver's license to a minor is conditioned upon the application of the minor being signed by an adult, and responsibility for any harm caused by the teenager's use of a motor vehicle is imposed upon the adult who sponsors the application. Other states have evinced similar recognition of the problem by enacting statutes substantially similar to the Indiana statute. See Annotation, 26 ALR (2d) 1320-1333.

In Bispham v. Mahoney, 37 Del. 285, 183 A. 315 (1936), a Delaware court explained the legislative policy in enacting a statute like Burns' Indiana Statutes Annotated (1952 Replacement) Section 47-2706.

> "The legislative purpose was to protect the public and the statutes were drawn to effect the purpose in the most practical way. Undoubtedly the legislature had in mind the fact that many minors under the age of 18 years have the ability and judgment to operate motor vehicles; that, in many cases, for economic reasons, it is just as necessary for such minors to employ themselves usefully by operating motor vehicles as to drive teams; and that the universal ownership and use of motor vehicles demanded a lawful operation by certain minors under the given age rather than an unlawful operation. So, having in mind the practical aspect of the matter, provision was made for the licensing of minors under 18 years, having demonstrated ability, as all licensees must. But, having in mind also, that caution, discretion and judgment are not youthful traits, the right was safeguarded by requiring the application to be signed by someone, having custody or charge of

the minor, who might be supposed to have intimate knowledge of the applicant's characteristics, and who would be willing to assume liability for injuries caused by the minor's negligence." 183 A. 316

But how is the father of a teenager who signs an application for the minor to fund the contingent responsibility in damages for the negligence of the minor? The father cannot purchase any general public liability policy that will protect himself and the public; under current underwriting practices, as the Court may judicially notice, any general public liability policy which one can buy today excludes coverage for liability arising out of use of a motor vehicle. Both the parents of teenagers, and the potential victims of teenager negligence, are vitally interested in the availability of insurance protection for the adult who sponsors the issuance of a driver's license to a teenager. That insurance protection either is available under the standard automobile policy or it is not available at all.

Considered in the context of this problem, the erroneous disposition by the Court of Appeals of the issues posed by the record in case should not be left unrepudiated by the Court.

Two issues were posed to the Court of Appeals. Putting to one side temporarily the question whether any specific exclusionary language in the policy involved deprived petitioner of coverage otherwise available, the first issue was whether or not the Insuring Agreements of the policy provided petitioner with coverage in respect to the liability claim asserted against him in the Weigles' lawsuit. This issue existed because Joseph Bell, the minor for whom petitioner had signed an Indiana application for a driver's license, was charged by the Weigles with negligence in operating an automobile that was not owned by petitioner and that was not

specifically described in the policy. The issue was whether or not Clause V of the Insuring Agreements of the policy, the "Use of Other Automobiles" clause, correlated with Clause I of the Insuring Agreements, the bodily injury liability general coverage clause, to provide petitioner with insurance protection.

The Court of Appeals did not resolve this first issue in its opinion. The opinion of the Court of Appeals expressly states that its conclusion to affirm the judgment of the District Court "is not affected by the defendant's argument" that the Use of other Automobiles clause of the policy Insuring Agreements was applicable. The Court of Appeals necessarily proceeded on the supposition that it was immaterial whether or not the legal liability of petitioner, predicated on signing the application for a minor's driver's license, arose out of the use of an automobile other than the one specifically described in the policy. The Court of Appeals turned its decision on a conclusion reached as to the second issue posed by the record, namely, whether or not specific exclusionary language in the policy barred petitioner from coverage.

What the Circuit Court of Appeals specifically decided relates to the exclusionary language in the policy barring from coverage any liability assumed by the insured under "contract or agreement." The Court of Appeals held that this exclusionary language operated to place outside policy protection a legal liability of the named insured predicated upon signing an application for a minor's driver's license whether or not the harm for which the named insured is liable is caused by the minor in operating the automobile owned by the named insured and specifically described in the policy.

This holding is erroneous for a number of reasons. First, it contravenes the provisions of the Indiana Insurance Code.

Burns' Indiana Statutes Annotated (1952 Replacement) Section 39-4309 prohibits the issuance in Indiana of an automobile liability policy to the owner of any motor vehicle unless the policy insures

> ". . . such owner against liability for damages for death or injury to person or property resulting from *negligence* in the operation of such motor vehicle, in the business of such owner or otherwise, by any person legally using or operating the same with the permission, express or implied, of such owner."

The Indiana courts have held that this statute means what it says and requires every automobile liability policy issued in Indiana to cover a legal liability of the named insured arising out of the use of the automobile specifically described in the automobile liability policy (other than liability arising out of illegal use of the automobile, as for example, use thereof by a minor without driver's permit in violation of law). Culley v. Farm Bureau Mut. Ins. Co. of Indiana, Inc., 224 Ind. 483, 69 N. E. 2d 19 (1946); Shadow v. Standard Acc. Ins. Co., 111 Ind. App. 19, 39 N. E. 2d 493 (1942).

In contravention of this Indiana authority, the decision of the Court of Appeals is a precedent for the following startling proposition, namely: That when a father (or any person) signs in Indiana (or any state having a statute like Burns' Section 47-2706) an application for a drivers license for his son (or other minor), and the minor thereafter causes harm in operating the father's own automobile, the automobile policy issued to the father as the named insured and specifically describing that automobile does not provide the father with coverage in respect to the liability imposed by statute as a result of having signed the application.

Second, the decision of the Court of Appeals is erroneous because the exclusionary language relating to liability as-

sumed under "contract or agreement" presents some ambiguity in that it is not to be taken literally. Even respondent admitted (see the opinion of the District Court drafted by counsel for respondent, Record, p. 41) that not all contractual liability is barred by the language involved from coverage; respondent asserted that contractual liability arising out of the entry by the named insured into what respondent called "collateral relationships" is covered by the policy notwithstanding the exclusionary language in question. An example of a factual situation to which, literally read, the exclusionary language would seem to be applicable but in respect to which it is certainly the understanding of the insurance bar, petitioner believes, that automobile liability policy protection exists, would be the following: The named insured under such a policy bails his automobile specifically described in the policy to a person who the named insured knows or should know is not a safe driver. The named insured may be found to have incurred liability as a result of the bailment agreement. See Opple v. Ray, 208 Ind. 450, 195 N E. 81 (1935). The exclusionary language being ambiguous, the Court of Appeals disregarded the principle of insurance policy construction followed by the courts of the State of Indiana by resolving the ambiguity so as to deprive, instead of to grant, coverage. Masonic Acc. Ins. Co. v. Jackson, 200 Ind. 472, 164 N. E. 628 (1929).

Third, the legal liability asserted against petitioner by the Weigles was simply not one that can be described as having been assumed "under any contract or agreement." The simple proof of this assertion is that liability is predicated upon Burns' Indiana Statutes Annotated Section 47-2706; that paragraph (d) of this statute directs that any person who signs a minor's application "thereby agrees" to be jointly and severally responsible with the minor for injury or damage

that the minor causes by reason of the operation of a motor vehicle; that the word "agrees" in this quoted language is obviously only a linguistic technique for imposing liability; that it is clearly immaterial under the statute whether the sponsor for the minor agrees to be jointly and severally responsible with the minor or whether he even knows or suspects that any legal consequences flow from signing the application; and that the Indiana statute itself describes in paragraph (e) the liability of the sponsor for the minor as "the liability imposed under this section, by reason of having signed such application . . ." All decisions prior to the decision of the Court of Appeals had held that a named insured under an automobile liability policy who signs an application for a minor's driver's license under a statute like Burns' Section 47-2706 is not thereby assuming a liability that sounds in contract, or that is within the scope of the "contract or agreement" exclusionary language of the automobile liability policy.

Marple v. American Automobile Ins. Co.,
82 Cal. App. 137, 255 P. 260 (1927)

Lackey v. Olds & Stoller Interexchange,
80 Cal. App. 687, 252 P. 672 (1927)

Hickman v. Tullos, 121 F. Supp. 152
(N.D. Ala. 1954)

McFarland v. Cordiero, 99 Cal. App. 352,
278 P. 889 (1929)

Robinson v. Hardaway, 293 Ky. 627,
169 S. W. 2d 823 (1943).

Fourth, even if petitioner did enter into a "contract or agreement," he did so only by virtue of signing the application for Joseph Bell. But at the time he entered into a "contract" by signing the application, petitioner did not assume a "liability" because there was then no fixed and presently existing duty to respond in damages. Liability arose only sub-

sequently to petitioner's execution of the "contract" as the result of subsequent use by the minor of an automobile causing harm. The exclusionary language relied on by the Court of Appeals for denying coverage does not, despite its literal import, apply to bar coverage for legal liability of the named insured which is only contingent at the time the named insured enters into the "contract or agreement." Preferred Accident & Insurance Company of New York v. Onali, 125 F. 2d 580 (8 Cir. 1942).

It is possibly unimportant under what rubric in the scheme of classifying discretionary grounds justifying allowance of the writ the error of the Court of Appeals is categorized. Whether the decision of the Court of Appeals be described as one conflicting, as it does, with the decision of another Court of Appeals, or as deciding, as it does, an important state question in a way in conflict with applicable state law, would not seem to be crucial. What should commend itself to the discretion of the Court, as a ground for the allowance of the writ here, is the fact that, if left unrepudiated, the decision of the Court of Appeals will be a precedent that deprives the public of insurance protection under the standard automobile liability policy in precisely the situation where, if insurance protection is not obtainable under such a policy, it is not obtainable at all. The decision of the Court of Appeals thus thwarts solution of the social and economic problem referred to above. The very practical consequence of the decision of the Court of Appeals is either that there is to be no insurance protection for adults who sponsor the issuance of drivers' licenses to teenagers or that persons must be discouraged from signing teenager applications for driver's licenses.

Petitioner asks the Court to notice judicially that the automobile liability policies issued by all major underwriters

in the country are cast in substantially uniform terms, and that the focal point of the decision of the Court of Appeals —the "contract or agreement" exclusionary language—is a standard clause in these policies.

Petitioner would suggest to the Court that uniformity and soundness of interpretation of the "contract or agreement" exclusionary language in the automobile liability policy—and that the problem of reconciling the economic and social need for minors being permitted to drive motor vehicles with the compelling need for financial responsibility on the nation's highways—is of no less vital importance to the day by day activities of the inhabitants of the United States of America (its pedestrians, its fathers and other custodians of minors and all persons who drive automobiles) than adjudication concerning some esoteric clause of the Internal Revenue Code.

Accordingly, it is submitted that the requested writ should issue.

Respectfully submitted,
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APPENDIX I

In the

United States Court of Appeals

For the Seventh Circuit

No. 12063 — SEPTEMBER TERM, AND SESSION, 1957

THE BUCKEYE UNION CASUALTY COMPANY,
Plaintiff-Appellee,
vs.
ROBERT E. BELL, ET AL.,
Defendants,
(Robert E. Bell, *Appellant*).

Appeal from the United States District Court for the Southern District of Indiana.

October 31, 1957

Before **Duffy, Chief Judge,** and **Schnackenberg** and **Hastings, Circuit Judges.**

Schnackenberg, Circuit Judge. Robert E. Bell, defendant, has appealed from orders of the district court denying certain defendants' motion for summary judgment and granting plaintiff's motion for summary judgment, and from its judgment adjudicating that plaintiff has no obligation to defendant Robert E. Bell (hereinafter referred to as "defendant"), the named insured in an automobile liability policy issued by plaintiff, in respect to an automobile accident occurring in Pennsylvania while said policy was in effect.

Plaintiff's action sought a declaratory judgment that it is not required by said policy to defend Robert E. Bell or anybody else in another action pending in the court below or to pay any judgment that might be recovered in that action. The other pending action (referred to herein

as the "Weigle case") is **Virginia J. Weigle, administratrix, et al., v. Ralph E. Brill, administrator of the estate of Joseph Bell, deceased, et al.** In the case before us plaintiff sued the persons who are plaintiffs in the **Weigle** case,[1] said defendant Robert E. Bell and Ralph E. Brill, administrator of the estate of Joseph Bell, deceased.[2]

It is admitted that no material fact issues exist in this case. The undisputed relevant facts we now state.

The **Weigle** case plaintiffs charged Joseph Bell with negligence in the operation of a certain motor vehicle which was involved in a collision on April 17, 1955. That vehicle was not owned by defendant or by Joseph Bell, now deceased, or described in said policy. The **Weigle** case raises issues concerning the liability, if any, of defendant to the plaintiffs in that case. The Weigle complaint alleged, **inter alia**:

> "Prior to the time of the collision complained of herein the defendant Robert E. Bell signed Joseph Bell's application for an Indiana Motor Vehicle Operator's License, and in so doing the defendant Robert E. Bell made a written undertaking as a part of said application wherein the defendant Robert E. Bell agreed to be responsible, jointly and severally with the said Joseph Bell, for any injury or damage which said Joseph Bell might cause by reason of Joseph Bell's operation of a motor vehicle in all cases where Joseph Bell is liable in damages." [3]

[1] Virginia J. Weigle, administratrix of the estate of Edward T. Weigle, deceased, Virginia J. Weigle, Charles Weigle, by his next friend Virginia J. Weigle, and Margaret Ann Weigle, by her next friend, Virginia J. Weigle.

[2] Other defendants named in the **Weigle** case are not involved here.

[3] At the time of the collision, according to the opinion filed by the district court, Joseph Bell was a minor. This fact is not disputed by either side, although whether he was under the age of 18 does not affirmatively appear in the record. From the fact that, in order to get a driver's license, defendant herein signed Joseph Bell's application, it seems to be assumed that Joseph was then under the age of 18 years. Whether he was related in any way to defendant is, on this record, a matter of conjecture. Anyhow, that is immaterial.

The policy provides bodily injury and property damage liability and comprehensive coverage for a certain described Pontiac automobile. Item 5 of the "Declarations" in the policy describes the purpose for which the Pontiac is to be used as "business and pleasure."

The policy recites that plaintiff agrees with defendant, in part:

"I. COVERAGE A — BODILY INJURY LIABILITY— TO PAY on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile.

* * * *

"II. DEFENSE * * * As respects the insurance afforded by the other terms of this policy under coverages A and B the company shall: (a) defend any suit against the insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof * * *.

* * * *

"IV. AUTOMOBILE DEFINED * * * (a) Automobile. Except where stated to the contrary, the word 'automobile' means: (1) Described Automobile — the motor vehicle or trailer described in this policy. * * *

* * * *

"V. USE OF OTHER AUTOMOBILES: If the named insured is an individual who owns the automobile classified as 'pleasure and business' or husband and wife either or both of whom own said automobile, such insurance as is afforded by this policy for bodily injury liability,

for property damage liability and for medical payments with respect to said automobile applies with respect to any other automobile, subject to the following provisions:

(a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word 'insured' includes (1) such named insured, (2) the spouse of such individual if a resident of the same household and (3) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III. Definition of Insured, does not apply to this insurance.

(b) This insuring agreement does not apply:

(1) to any automobile owned by, hired as part of a frequent use of hired automobiles by, or furnished for regular use to, the named insured or a member of his household other than a private chauffeur or domestic servant of the named insured or spouse;

(2) to any automobile while used in the business or occupation of the named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, chauffeur or servant;

(3) to any accident arising out of the operation of an automobile repair shop, public garage, sales agency, service station or public parking place;

(4) under coverage C, unless the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by such chauffeur or servant, or from the occupancy of said automobile by such named insured or spouse."

In a part of the policy entitled "Exclusions", it is provided, in part:

"THIS POLICY DOES NOT APPLY: * *

(b) under coverages A, B and C, to liability assumed by the insured under any contract or agreement, * *."

In that part of the policy entitled "Conditions", it is provided, in part:

"16. ASSISTANCE AND COOPERATION OF THE INSURED * * * The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident. * * *"

Also:

"23. TERMS OF POLICY CONFORMED TO STATUTE. Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes."

Count II of plaintiff's complaint averred the following (summarized) facts, which are admitted by defendants' answer:

"(1) The automobile involved in the collision of April 17, 1955 operated by Joseph Bell was not the automobile specifically described in the Policy, and Joseph Bell was 'not the named insured under the policy . . .';

"(2) Neither defendant nor any person for his use or benefit drove, maintained, used or owned the automobile involved in the collision in the **Weigle Case**, nor did defendant's wife drive, operate, use or maintain said automobile;

"(3) Neither defendant, 'the named insured under' the policy, nor his wife, exercised any control over Joseph Bell during the relevant period; nor did Joseph Bell during that period operate the automobile involved in the collision for the use or benefit of either defendant or his wife;

"(4) Joseph Bell operated the automobile for the sole use and benefit of hmiself or others, not for the use or benefit of defendant or defendant's wife; and Joseph Bell exercised no control over, nor responsibility for, any activities of defendant or defendant's wife; and neither defendant nor his wife nor Joseph Bell had any 'connection, understanding or any arrangement' among themselves concerning the operation or use of the automobile involved in the collision;

"(5) By 'reason of the above and foregoing allegations,' Joseph Bell was neither the named insured nor an insured of any kind under the Policy."

At all times relevant in this case, there was in force a driver's license statute in Indiana (Burns Ind. Statutes 1952, Sec. 47-2706) which, so far as now involved, reads as follows:

"(c) The application, of any person, under the age of eighteen [18] years, for any permit or license to be issued under the provisions of this act, shall be signed and sworn to or affirmed before a person authorized to administer oaths, by the father of the applicant, if the father is living and has custody of such applicant, other-

wise by the mother or guardian having the custody of such applicant, or in the event neither parent is living and the applicant has no guardian, then by the person having custody of him or by an employer of such applicant and in the event there is no parent, guardian, or employer, then by any other responsible person, who is willing to assume the obligations imposed upon him by the provisions of this section.

"(d) Any person so signing such application as above provided thereby agrees to be responsible, jointly and severally with such applicant, for any injury or damage which such applicant may cause by reason of the operation of a motor vehicle, in all cases where the applicant is liable in damages.

"(e) Any person, who has so signed the application of such applicant for a permit or license, may thereafter file with the department a verified written request that such permit or license so granted be canceled. Thereupon the department shall cancel such permit or license and the person, who signed the application of such minor applicant, shall be relieved from the liability imposed under this section, by reason of having signed such application, thereafter incurred by such minor in operating a motor vehicle.

"(f) When such minor applicant reaches the age of eighteen [18] years, the person who has signed said minor's application shall be relieved from the liability, imposed under this section, thereafter incurred by such minor in operating a motor vehicle under this section."

The Weigle case plaintiffs assert liability against Robert E. Bell because he signed the application of Joseph Bell for a

driver's license under the Indiana statute "wherein [they say] the defendant Robert E. Bell agreed to be responsible for any injury or damage which said Joseph Bell might cause by reason of Joseph Bell's operation of a motor vehicle in all cases where Joseph Bell is liable for damages."

Plaintiff relies on its policy provision excluding coverage of liability assumed by the insured under any agreement. It argues that defendant, in signing such application agreed to assume liability for the injuries alleged to have been caused by Joseph Bell. For this reason, inter alia, it contends that the policy does not provide coverage with respect to the liability asserted against defendant by the plaintiffs in the Weigle case and does not impose any obligation on plaintiff to defend that action. We agree.

Our conclusion is not affected by defendant's argument that insuring agreement V—Use of Other Automobiles—applies to this case. That clause is limited by its specification that the unqualified word "insured" includes the named insured and his spouse, if a resident of the same household, and any other person or organization legally responsible for the use by the named insured or spouse of an automobile not owned or hired by such other person or organization. From a careful consideration of this language, it becomes obvious that Joseph Bell is not a person included in insuring agreement V.

The cases of **Lackey v. Olds & Stoller Interexchange**, 80 Cal. App. 687, 252 Pac. 672, and **Marple v. American Automobile Ins. Co.**, 82 Cal. App. 137, 255 Pac. 260, relied on by defendant, are inapplicable here because they are distinguishable both on the facts and the law.

For the reasons aforesaid, the judgment of the district court is affirmed.

AFFIRMED.

APPENDIX II

United States Court of Appeals For the Seventh Court

Chicago 10, Illinois

Thursday, October 31, 1957

Before

HON. F. RYAN DUFFY, Chief Judge

HON. ELMER J. SCHNACKENBERG, Circuit Judge

HON. JOHN S. HASTINGS, Circuit Judge

THE BUCKEYE UNION CASUALTY COMPANY, *Plaintiff-Appellee,* vs. ROBERT E. BELL *Defendant-Appellant.* No. 12063	Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Terre Haute Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs.

APPENDIX III

United States Court of Appeals For the Seventh Court

Chicago 10, Illinois

Tuesday, November 26, 1957

Before

HON. F. RYAN DUFFY, Chief Judge

HON. ELMER J. SCHNACKENBERG, Circuit Judge

HON. JOHN S. HASTINGS, Circuit Judge

THE BUCKEYE UNION CASUALTY COMPANY,
Plaintiff-Appellee,

No. 12063

vs.

ROBERT E. BELL, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, DENIED.